Explanatory Notes Relating to the Income Tax Act, the Air Travellers Security Charge Act and the Excise Tax Act

Published by
The Honourable Ralph Goodale, P.C., M.P.
Minister of Finance

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Canada

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These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Income Tax Application Rules*, the *Air Travellers Security Charge Act* and the *Excise Tax Act*. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Ralph Goodale, P.C., M.P.,
Minister of Finance

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Income Tax

Income Tax Act

Clause 2

SR&ED in the exclusive economic zone

ITA
37

Section 37 of the Act sets out rules for the deductibility of expenditures incurred by a taxpayer for scientific research and experimental development (SR&ED) both inside and outside Canada. Subsection 37(1) allows a taxpayer carrying on business in Canada to deduct certain current and capital expenditures incurred in respect of SR&ED carried on in Canada. An investment tax credit is also available under section 127 of the Act in respect of such SR&ED. Subsection 37(2), on the other hand, provides for the deduction only of current expenditures incurred in respect of SR&ED carried on outside Canada. For these purposes, Canada generally includes the territorial seas up to 12 nautical miles from the low-water line along the coasts of Canada.

New subsection 37(1.3) provides that SR&ED expenditures that are incurred, in the course of a business otherwise carried on by a taxpayer in Canada, in the zone identified by the *Oceans Act* as the exclusive economic zone (EEZ) of Canada (or in the airspace above or the subsoil or seabed below that zone) will be considered to have been incurred by the taxpayer in Canada.

Generally, the *Oceans Act* provides that the EEZ of Canada consists of the area that is up to 200 nautical miles from the low-water line along the coasts of Canada.

This amendment applies to expenditures made after February 22, 2005.

Clause 3

Foreign spin-offs

ITA
86.1

Subsection 86.1(2) of the Act defines an "eligible distribution" for the purpose of the tax-deferral that applies with respect to distributions, to Canadian resident shareholders of a foreign corporation, of spin-off shares. The definition also applies for the purpose of Part XI of the Act, which limits the amount of foreign property that may be held by pension funds and other deferred income plans.

Subsection 86.1(2) is amended to remove the references to Part XI, as a consequence of the repeal of Part XI, effective for distributions received after 2004.

Clause 4

Tax consequences of qualifying dispositions

ITA
107.4

Subsection 107.4(3) of the Act provides a number of income tax consequences that apply in respect of a "qualifying disposition" (as defined in subsection 107.4(1)) of property to a trust. Paragraph 107.4(3)(*c*) provides a special rule that applies for the purpose of the foreign property limit under Part XI where property is transferred from a trust governed by a registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) to another trust governed by an RRSP or RRIF.

Paragraph 107.4(3)(*c*) is repealed, as a consequence of the repeal of Part XI, effective for dispositions that occur after 2004. Paragraph 107.4(3)(*b*) is amended to remove the reference to paragraph (*c*).

Clause 5

Personal credits

ITA
118 (3.1) to (3.3)

Section 118 of the Act provides for the calculation of various personal tax credits. These include the basic personal credit, the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative. These credits are calculated by reference to 16% of the amount used in section 118 to compute the particular credit.

New subsection 118(3.1) provides that, in addition to the annual increases provided under the indexing provisions, the amount used to compute an individual's basic personal credit will be increased

- for 2006, by $100,
- for 2007, by $100,
- for 2008, by $400, and
- for 2009, by the greater of $600 and the amount required to bring the basic personal credit to $10,000.

New subsection 118(3.2) provides that, in addition to the annual increases provided under the indexing provisions, the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative will be increased

- for 2006, by $85,
- for 2007, by $85,
- for 2008, by $340, and
- for 2009, by the greater of $510 and the amount required to bring those credits to $8,500.

New subsection 118(3.3) provides that, in addition to the annual increases provided under the indexing provisions, the used to compute the net income threshold for the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative will be increased

- for 2006, by $8.50,

- for 2007, by $8.50,
- for 2008, by $34, and
- for 2009, by the greater of $51 and the amount required to bring the net income threshold for those credits to $850.

The amendments apply on Royal Assent.

Clause 6

Tsunami relief

ITA
118.1

Section 118.1 of the Act provides for a charitable donations tax credit that may be claimed by individuals who make charitable donations, gifts to the crown and certain gifts of cultural property and ecologically sensitive land. An application rule is introduced for the purpose of section 118.1 of the Act, to provide that a gift made by an individual after 2004 and before January 12, 2005 is deemed to have been made in the individual's 2004 taxation year if

(*a*) the individual claims a charitable donations tax credit in respect of the gift for the 2004 taxation year,

(*b*) the gift was made to a registered charity listed under the International Humanitarian Assistance program of the Canadian International Development Agency,

(*c*) the individual directed the charity to apply the gift to the tsunami relief effort, and

(*d*) the gift was in the form of cash or was transferred by way of cheque, credit card or money order.

Clause 7

Refundable medical expense supplement

ITA
122.51

Section 122.51 of the Act provides a refundable medical expense supplement equal to the lesser of $571 (for 2005) and 25% of the total of allowable expenses claimed under the disability supports deduction and the medical expense tax credit by an eligible individual for the year. The supplement is reduced by 5% of the individual's "adjusted income" in excess of an indexed threshold ($21,663 for 2005).

Section 122.51 is amended to increase the maximum amount of the supplement from $571 (as indexed for 2005) to $750 (indexed after 2005).

This amendment applies to the 2005 and subsequent taxation years.

Clause 8

CCTB – child disability supplement

ITA
122.61(1)

Section 122.61 of the Act provides for the calculation of the Canada Child Tax Benefit (CCTB). The CCTB provides federal assistance to families through three components: the CCTB base benefit for low- and middle-income families; the National Child Benefit (NCB) supplement which provides additional assistance for low-income families; and the Child Disability Benefit (CDB) which provides assistance to families for each eligible child who meets the eligibility criteria for the disability tax credit.

Subsection 122.61(1) is amended to increase the annual amount on which the CDB is calculated to $2,000 (indexed for payments after June 2006) for each eligible child. Without this increase, the maximum annual CDB for payments after June 2005 would be $1,681 (including indexation) in respect of each eligible child.

This amendment applies to overpayments that are deemed to arise after June 2005.

Clause 9

Corporate surtax

ITA
123.2

Section 123.2 of the Act levies a 4% surtax on the tax payable under Part I of the Act by a corporation. The surtax is calculated by reference to federal corporate tax payable after the 10-per-cent provincial abatement, but before tax credits such as the small business deduction and the manufacturing and processing deduction. Section 123.2 is amended to provide that the corporate surtax will be eliminated on January 1, 2008, prorated for taxation years that include that date.

Clause 10

Corporation tax reductions

ITA
123.4

Section 123.4 of the Act contains rules that allow a corporation to reduce its tax otherwise payable under Part I of the Act by the "general rate reduction percentage" of the corporation's "full rate taxable income" – a term that is separately defined in the section for Canadian-controlled private corporations (CCPCs) and for other corporations. This section is amended, as described below, to provide for further corporate income tax rate reductions totalling one-half of a percentage point for 2008, one percentage point for 2009, and two percentage points for the 2010 and later calendar years. The corporate income tax rate reductions are prorated to reflect the number of days in a corporation's taxation year that fall in a given calendar year. Investment corporations, mortgage investment corporations and mutual fund corporations are not eligible for this rate reduction.

Definitions

ITA
123.4(1)

Subsection 123.4(1) sets out definitions for the purposes of section 123.4.

"full rate taxable income"

The "full rate taxable income" of a corporation for a taxation year is, in general terms, that part of the corporation's taxable income for the year that has not benefited from any of the various special effective tax rates provided under the Act. This amount is determined differently depending on the nature of the corporation. Paragraph (a) of the definition applies to corporations, other than CCPCs and various "specialty corporations" such as investment corporations and mutual fund corporations. Paragraph (a) is amended to clarify that a non-resident corporation's taxable income earned in Canada in the year is included in the "full rate taxable income" calculation. Subparagraph (a)(i) is amended to reflect the changes in the manufacturing and processing profits deduction (see commentary on subsection 125.1(1)).

"general rate reduction percentage"

A corporation's "general rate reduction percentage" for a taxation year is a rate reduction percentage that is computed by reference to the calendar year or years in which a corporation's taxation year falls. The percentage is amended to provide for further corporate income tax rate reductions totalling one-half of a percentage point for 2008, one percentage point for 2009, and two percentage points for the 2010 and later calendar years.

Clause 11

Manufacturing and processing profits deduction

ITA
125.1

Subsection 125.1(1) of the Act provides a reduced rate of corporate tax on Canadian manufacturing and processing profits. Generally, the rate reduction takes the form of a deduction, from Part I tax otherwise payable, of an amount equal to a specified percentage – currently 7% – of a corporation's "Canadian manufacturing and processing profits" (other than profits eligible for the small business deduction under section 125 of the Act). Subsection 125.1(2) extends the 7% corporate tax rate reduction to a corporation that generates electrical energy for sale, or produces steam for use in the generation of electrical energy for sale.

The 7% specified percentage in subsections 125.1(1) and (2) is amended to reflect the changes to the "general rate reduction percentage" in subsection 123.4(1) of the Act, so that the rate of tax applied to corporate manufacturing and processing profits remains equal to the rate applied to other corporate taxable income (see commentary on subsection 123.4(1) of the Act).

Clause 12

Registered education savings plans

ITA
146.1

Section 146.1 of the Act contains the rules governing registered education savings plans (RESPs). Paragraph 146.1(2)(*h*) provides that, as a condition of registration, contributions to an RESP can be made only for 21 years following the year in which the plan is entered into. Paragraph 146.1(2)(*i*) requires that an RESP provide for its termination no later than the end of the year following the 25th year it was entered into.

Paragraphs 146.1(2)(*h*) and (*i*) are amended to extend the maximum contribution period and the maximum period during which an RESP may be in existence to 25 years and 30 years, respectively, following the year in which the plan was entered into.

These extended limits apply only if the plan is a "specified plan", as defined in subsection 146.1(1). A specified plan is essentially a single beneficiary RESP under which the beneficiary is an individual who is entitled to a disability tax credit under subsection 118.3(1) for the individual's taxation year that ends in the 21st year following the year in which the plan was entered into (or who would be so entitled if certain deductions under section 118.2 were ignored). Further, at all times after the end of the 25th year following the year in which the plan was entered into, a specified plan must not permit another individual to be designated as a beneficiary under the plan.

Under the existing tax rules, a beneficiary under a family RESP who qualifies for the disability tax credit can transfer their share of the property in the plan into a single beneficiary RESP in order to ensure access to these extended limits.

Paragraph 146.1(2)(*d.1*) allows an RESP to make a distribution of its accumulated income to a subscriber (or other person) only in certain situations. One such situation is where the payment is made in the 25th year following the year in which the plan was entered into, since the plan must be terminated by the end of that year. As a consequence of the amendment to paragraph 146.1(2)(*i*) to extend the termination date for a specified plan by 5 years, paragraph 146.1(2)(*d.1*) is amended to replace the reference to the 25th year with a reference to the year in which the plan is required to be terminated.

Subsection 146.1(6.1) contains a special rule that applies for specified registration conditions where property is transferred from one RESP to another. If the transferring plan was entered into before the receiving plan, subsection 146.1(6.1) deems the receiving plan to have been entered into at that earlier time. Subsection 146.1(6.1) is amended so that it also applies for the purpose of the new definition "specified plan" in subsection 146.1(1).

These amendments apply to the 2005 and subsequent taxation years.

Clause 13

Registered pension plans

ITA
147.1

Subsection 147.1(1) of the Act defines "money purchase limit". The limit is currently set at $18,000 for 2005 and indexed to average wage growth for each year after 2005.

The definition is relevant for a number of provisions in the Act and the *Income Tax Regulations* relating to registered pension plans (RPPs) and other deferred income plans. For example, an RPP becomes revocable if a member's pension adjustment for a year exceeds the money purchase limit for the year. The money purchase limit also provides the basis for the limits on deductible contributions to RRSPs, contributions to deferred profit sharing plans (DPSPs) and pensions payable under defined benefit provisions of RPPs. In addition, the definition of money purchase limit is relevant in determining pension credits and other prescribed amounts in respect of individuals who participate in certain unregistered retirement arrangements.

The definition is amended to increase the money purchase limit to $19,000 for 2006, $20,000 for 2007, $21,000 for 2008 and $22,000 for 2009. For years after 2009, the limit will be $22,000 adjusted to reflect increases in the average wage. Although it is not expected that indexation of the former $18,000 money purchase limit would provide a limit higher than the amended limit for any particular year after 2005, if this were to be the case, the greater limit would apply for that year.

This amendment applies after 2004.

Clause 14

Tax in respect of registered investments

ITA
204.4

Section 204.4 of the Act provides that a trust or corporation may apply to become a registered investment for an RRSP, a RRIF or a DPSP.

Section 204.4 is amended to reflect the repeal of the foreign property rules in Part XI. Specifically, paragraph 204.4(2)(*a*) is amended to replace the references to taxpayers described in various provisions in section 205 with references to the relevant provisions in subsection 149(1). Subsection 204.4(4) is amended to remove the reference to Part XI.

These amendments apply to taxation years that begin after 2004.

Clause 15

Labour-sponsored venture capital corporations

ITA
204.8

Subsection 204.8(1) of the Act defines terms for the purposes of the registration of labour-sponsored venture capital corporations (LSVCCs) and the application to registered LSVCCs of penalties and taxes under Part X.3. An "eligible investment" for an LSVCC is defined to include certain debt issued by qualifying small and medium business entities. To be eligible, the debt must generally be subordinate to all other debt issued by the entity, other than with respect to debt that is prescribed to be a small business security for purposes of the definition "small

business property" in subsection 206(1) (foreign property rules). Subsection 5100(2) of the Regulations sets out the requirements that must be met to qualify as a small business security.

The definition "eligible investment" in subsection 204.8(1) is amended to remove the reference to subsection 206(1). This amendment, which applies to taxation years that begin after 2004, is strictly consequential to the repeal of the foreign property rules in Part XI. It is intended that an amendment be made to subsection 5100(2) of the Regulations so that it applies for the purpose of the LSVCC rules.

Clauses 16 to 18

Foreign property rules

ITA
Parts XI and XI.1

Part XI of the Act imposes a penalty tax of 1% per month on excess foreign property held by certain trusts and other tax-exempt entities governed by RPPs and other deferred income plans. It also imposes (under section 206.1) a penalty tax on tax-exempt entities that enter into an agreement to purchase shares at a price that may differ from their fair market value at the time that the purchase is to take place. Part XI.1 imposes a penalty tax in respect of non-qualified investments held by RRSPs, RRIFs, RESPs or DPSPs.

Part XI is repealed effective for months that end after 2004, thus eliminating the foreign property rules. However, the penalty tax in section 206.1 is being maintained by moving the provision to Part XI.1 and renumbering it as subsection 207.1(5). Part XI.1 is retitled to reflect this change.

Clause 19

Interpretation

ITA
248

Section 248 defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

248(1)

"automobile"

An "automobile," for the purposes of the Act, is defined as a motor vehicle designed primarily to carry individuals on highways and streets and having a seating capacity of not more than nine people (including the driver) and a motor vehicle that is a station wagon or van if it is equipped to carry more than the driver and two passengers but not more than the driver and eight passengers. However, vehicles such as ambulances and clearly marked emergency-response fire or police vehicles are excluded from this definition.

The definition of "automobile" is relevant to the limitation on the depreciable cost of a passenger vehicle, the equivalent restrictions on deductible lease payments in respect of leased passenger vehicles, and the limitation on the deductibility of interest expenses with respect to passenger vehicles. This definition is also relevant for the purpose of calculating employment-related benefits such as the automobile operating expense benefit and the reasonable standby charge.

The definition "automobile" is amended to exclude clearly marked emergency medical response vehicles that are used, in connection with or in the course of an individual's office or employment with an emergency medical response or ambulance service, to carry emergency medical equipment together with one or more emergency medical attendants or paramedics.

This amendment applies to the 2005 and subsequent taxation years.

"disposition"

The expression "disposition" is used throughout the Act, particularly in provisions relating to transactions involving property.

A "disposition" includes a transaction or an event described in any of paragraphs (*a*) to (*d*) of the definition but does not include a transaction or an event described in any of paragraphs (*e*) to (*m*) of the definition. Paragraph (*g*) of the definition avoids a disposition in the case of certain trust-to-trust transfers between RRSPs and RRIFs, regardless of whether there is a change in beneficial ownership. This rule, in conjunction with the rules in paragraph 107.4(3)(*c*) and subsection 206(4), is intended primarily to clarify the tax treatment of transfers between RRSPs and RRIFs for purposes of the foreign property rules in Part XI.

Two amendments are made to the definition "disposition" to reflect the repeal of Part XI. Paragraph (*g*) of the definition is no longer needed and is repealed, and paragraph (*c*) is amended to remove the reference to paragraph (*g*).

These amendments apply to dispositions that occur after 2004.

Clause 20

Proportional holdings in properties

ITA
259

Section 259 of the Act provides a "look-through" rule that applies to taxpayers described in section 205 (which includes registered investments, as defined in subsection 204.4(1), and trusts governed by RPPs and RRSPs) that acquire units of a "qualified trust". If the qualified trust so elects, each taxpayer is deemed to acquire, hold and dispose of its proportionate interest in the underlying assets of the qualified trust. This rule can benefit a taxpayer where the direct investment in the units of the qualified trust would constitute a non-qualified investment or foreign property. By "looking through" to the underlying assets of the qualified trust, the taxpayer may be able to reduce or eliminate the tax penalties that result from holding non-qualified investments or excessive foreign property.

The look-through rule described above also applies, with all necessary changes, where an RPP trust or certain other tax-exempt entity holds shares in the capital stock of a "qualified corporation" and the corporation so elects. A "qualified corporation" is defined in subsection 259(5) as a corporation described in paragraph 149(1)(*o.2*) that meets certain conditions. As none of the entities that are allowed to invest in these corporations are subject to the qualified investment rules, the application of section 259 in connection with these corporations is relevant only for purposes of the foreign property rules.

Section 259 is amended to reflect the repeal of the foreign property rules in Part XI. Specifically, subsection 259(1) is amended to remove the reference to Part XI and to replace the reference to a taxpayer described in section 205 with references to the relevant provisions in subsection 149(1) and to a registered investment. Section 259 is also amended to eliminate provisions that were relevant only for purposes of the foreign property rules (paragraph 259(1)(*c*), subsection 259(2) and the

definition of "qualified corporation" in subsection 259(5)). Finally, subsections 259(3) and (4) are amended to remove references to qualified corporations and to improve clarity.

These amendments apply to taxation years that begin after 2004.

Income Tax Application Rules

Clause 21

ITAR
65

Section 65 of the *Income Tax Application Rules 1971* sets out special transitional rules for purposes of applying the foreign property rules in Part XI of the *Income Tax Act* with respect to property acquired prior to certain dates in the 1970s. As a consequence of the repeal of Part XI, section 65 is no longer needed and is repealed.

Air Travellers Security Charge

The Air Travellers Security Charge Act

Clause 22

Amount of charge if service acquired in Canada

ATSCA
12(1)(*a*) to 12(1)(*e*)

Existing subsection 12(1) of the *Air Travellers Security Charge Act* sets out the amount of the charge that is payable on an air transportation service acquired in Canada. This includes air transportation services deemed under section 13 of the Act to have been acquired in Canada.

The subsection is amended to reduce the charge for domestic air travel to $5 for one-way travel and to $10 for round-trip travel, for transborder air travel to $8.50 and for air travel from Canada to another international destination to $17. The reduced rates are applicable to air travel that includes a chargeable emplanement on or after March 1, 2005, and that is purchased on or after that date.

New paragraphs 12(1)(*a*) and (*b*) set out the new reduced amount of the charge for domestic air travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired in Canada that does not include transportation to a destination outside of Canada is:

> (*a*) $4.67 for each chargeable emplanement included in the service, to a maximum of $9.35, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or
>
> (*b*) $5.00 for each chargeable emplanement included in the service, to a maximum of $10.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

New paragraphs 12(1)(*c*) and (*d*) set out the new reduced amount of the charge for transborder air travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired in Canada that includes transportation to a destination outside Canada and does not include transportation to a destination outside the continental zone is:

(*c*) $7.94 for each chargeable emplanement included in the service, to a maximum of $15.89, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or

(*d*) $8.50 for each chargeable emplanement included in the service, to a maximum of $17.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

New paragraph 12(1)(*e*) sets out the new reduced amount of the charge for air travel from Canada to another international destination. The new paragraph provides that the amount of the charge in respect of an air transportation service acquired in Canada that includes transportation to a destination outside the continental zone is:

(*e*) $17.00, if the service includes transportation to a destination outside the continental zone.

Amount of charge if service acquired outside Canada

ATSCA
12(2)(*a*) to 12(2)(*c*)

Existing subsection 12(2) of the Act sets out the amount of the charge that is payable on an air transportation service acquired outside Canada.

The subsection is amended to reduce the charge for transborder air travel to $8.50 and for air travel from Canada to another international destination to $17. The reduced rates are applicable to air travel that includes a chargeable emplanement on or after March 1, 2005 and that is purchased on or after that date.

New paragraphs 12(2)(*a*) and (*b*) set out the new reduced amount of the charge for transborder air travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired outside Canada that includes transportation to a destination outside Canada but within the continental zone is:

(*a*) $7.94 for each chargeable emplanement by an individual on an aircraft used to transport the individual to a destination outside Canada but within the continental zone, to a maximum of $15.89, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or

(*b*) $8.50 for each chargeable emplanement by an individual on an aircraft used to transport the individual to a destination outside Canada but within the continental zone, to a maximum of $17.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

New paragraph 12(2)(*c*) sets out the new reduced amount of the charge for air travel from Canada to another international destination. The new paragraph provides that the amount of the charge in respect of an air transportation service acquired outside Canada that includes transportation to a destination outside the continental zone is:

(*c*) $17.00, if the service includes transportation to a destination outside the continental zone.

Clause 23

Coordinating amendment

ATCSA
12

The amendments address the fact that the same provisions of the *Air Travellers Security Charge Act* are being amended by both Bill C-33 (the *Budget Implementation Act, 2004, No. 2*) and this Bill (the *Budget Implementation Act, 2005*). The amendments ensure that the desired result underlying each set of the amendments contained in the two bills will be achieved if both bills receive royal assent.

Goods and Services Tax and Harmonized Sales Tax

The Excise Tax Act

Clause 24

GST/HST health care rebate

ETA
259

Section 259 of the *Excise Tax Act* (the "Act") provides rebates to hospital authorities and other public service bodies (i.e., charities, qualifying non-profit organizations, municipalities, school authorities, public colleges and universities). Hospital authorities are generally entitled to claim a rebate of 83 per cent of the goods and services tax (GST) and the federal component of the harmonized sales tax (HST) incurred in respect of property or services used to operate a public hospital. Charities and qualifying non-profit organizations that provide exempt health care services in a non-hospital setting can currently claim a 50-per-cent rebate.

The amendments to section 259 extend the application of the 83-per-cent rebate of the GST and the federal component of the HST to government funded charities, public institutions and qualifying non-profit organizations in respect of property or services used to provide health care supplies similar to those traditionally provided in hospitals.

The amendments to section 259 apply for the purpose of determining the rebate of a person under that section for claim periods ending on or after January 1, 2005. However, the rebate shall be determined as if these amendments had not come into force for the purpose of determining the rebate of a person for the claim period of the person that includes January 1, 2005, in respect of

- an amount of tax that became payable by the person before January 1, 2005;
- an amount that is deemed to have been paid or collected by the person before January 1, 2005; or
- an amount that is required to be added in determining the person's net tax as a result of a branch or division of the person becoming a small supplier division before January 1, 2005, or as a result of the person ceasing before January 1, 2005, to be a registrant.

Subclause 24(1)

Definition "selected public service body"

ETA
259(1)

Subsection 259(1) of the Act defines terms used throughout the section. The definition "selected public service body" lists entities, other than charities and qualifying non-profit organizations, that are eligible for a rebate under section 259. This definition is amended by adding new paragraphs (*f*) and (*g*) to include the terms "facility operator" and "external supplier" (as those terms are defined in subsection 259(1)) in the list of organizations that are selected public service bodies for the purposes of section 259.

Subclause 24(2)

Definition "specified percentage"

ETA
259(1)

The definition "specified percentage" lists the various rebate percentages applicable to different entities entitled to claim a rebate in respect of GST and the federal component of HST they incurred. Paragraph (*b*) of the definition specifies that the rebate percentage of 83 per cent applies to hospital authorities. This paragraph is amended by adding "facility operator" and "external supplier" (as those terms are defined in subsection 259(1) of the Act) as entities to which the 83-per-cent rate applies.

Subclause 24(3)

Definitions

ETA
259(1)

Subsection 259(1) of the Act is amended by adding definitions pertaining to the 83-per-cent rebate of the GST and the federal component of the HST incurred in respect of certain property and services relating to health care supplied by government funded charities,

public institutions and qualifying non-profit organizations that is similar to health care traditionally provided in hospitals.

"ancillary supply"

The amendment adds the definition "ancillary supply" that is relevant for the purposes of new clauses 259(4.1)(*b*)(iii)(B) to (D) of the Act, which specify those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be recovered by a charity, public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act), or its capacity as a "facility operator" or "external supplier" (as those terms are defined in subsection 259(1)). Paragraph (*a*) of the definition "ancillary supply" provides that an exempt supply of a service of organizing or coordinating the making of supplies that fall within the meaning of new definitions "facility supply" or "home medical supply" in subsection 259(1) is an "ancillary supply" provided that an amount, other than a nominal amount, is paid or payable to the supplier as "medical funding" (as defined in subsection 259(1)) in respect of the supply.

Paragraph (*b*) of the definition "ancillary supply" provides that an "ancillary supply" is also the portion of an exempt supply of property or a service that represents the extent to which the property or service is, or is reasonably expected to be, consumed or used in the course of making a "facility supply". This paragraph has the effect of allowing a supplier that makes an exempt supply of property or a service that is, or is reasonably expected to be, consumed or used partly in making "facility supplies" and partly in the course of other activities to claim an 83-per-cent rebate of the tax incurred in the course of making the exempt supply to the same extent that the property or service supplied is, or is reasonably expected to be, consumed or used in the course of making the "facility supplies".

For example, assume that a charity makes an exempt supply of laundry services part of which are to be consumed by the recipient in providing care for patients who are receiving "facility supplies" at a public hospital and part of which are to be consumed in providing care for residents of a chronic care facility who receive personal care of a type that is excluded from the definition "facility supply." The charity would generally be able to claim an 83-per-cent rebate in respect of tax incurred for the property or services that it consumes or uses in providing the laundry services to the extent that the laundry services

are to be consumed or used in providing care to patients at the public hospital.

Exempt supplies that are "facility supplies", "home medical supplies" or supplies prescribed by regulations are excluded from paragraph (*b*) of the definition "ancillary supply", as are supplies of financial services. Further, in order for all or a portion of a supply to qualify as an "ancillary supply," an amount, other than a nominal amount, must be paid or payable as "medical funding" to the supplier in respect of the supply or portion.

"external supplier"

The amendment adds the definition "external supplier" that is relevant for new clause 259(4.1)(*b*)(iii)(D) of the Act, which specifies those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a person acting in its capacity as an "external supplier". In order to be an "external supplier", a person must be a charity, public institution or qualifying non-profit organization that makes "ancillary supplies", "facility supplies" or "home medical supplies" (as those terms are defined in subsection 259(1)) but that does not operate a public hospital or a qualifying facility (within the meaning of new subsection 259(2.1)). For example, an external supplier that begins to operate a qualifying facility and therefore is a "facility operator" (as defined in subsection 259(1)) ceases to be an "external supplier".

"facility operator"

The amendment adds the definition "facility operator" that is relevant for new clause 259(4.1)(*b*)(iii)(C) of the Act, which specifies those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a person acting in its capacity as a "facility operator". In order to be a "facility operator", a person must be a charity, public institution or qualifying non-profit organization (other than a hospital authority) and must operate a qualifying facility (within the meaning of new subsection 259(2.1)).

"facility supply"

The amendment adds the definition "facility supply" that is relevant for the purposes of new clauses 259(4.1)(*b*)(iii)(B) to (D) of the Act, which specify those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a charity,

public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act), "facility operator" or "external supplier" (as those terms are defined in subsection 259(1)). It is also used in determining whether the condition set out in new paragraph 259(2.1)(*a*) is met for the purpose of establishing whether a facility is a qualifying facility (within the meaning of new subsection 259(2.1)) of the operator of the facility.

A "facility supply" must be an exempt supply (other than a supply prescribed by regulations) of property or a service and must meet the requirements set out in subparagraphs (*a*)(i) and (ii), and, under certain circumstances, in subparagraph (*a*)(iii) and paragraph (*b*). Paragraph (*a*) of the definition "facility supply" requires that the property supplied be made available, or the service supplied be rendered, to an individual at a public hospital or a qualifying facility as part of a medically necessary process of health care for the individual. The process must be for the purpose of maintaining health, preventing disease, diagnosing or treating an injury, illness or disability of the individual or providing palliative health care.

In order for a supply to fall under the definition "facility supply", subparagraphs (*a*)(i) and (ii) of that definition require that the medically necessary process of which the supply is a part take place in whole or in part at the public hospital or qualifying facility where the property supplied is made available or where the service supplied is rendered. Further, the process must reasonably be expected to take place under the active direction or supervision, or with the active involvement, of either a physician acting in the course of the practice of medicine or in certain circumstances, a midwife, a nurse practitioner or a person prescribed by regulations.

The additional requirements set out in subparagraph (*a*)(iii) of the definition apply only in the circumstances where the process of health care for the individual is a process of chronic care that requires the individual to stay overnight at the public hospital or qualifying facility. In these circumstances, the process must require, or reasonably be expected to require, the additional elements of health care referred to in clauses (*a*)(iii)(A) to (D) of the definition that are explained in detail in the following paragraphs.

Clause (*a*)(iii)(A) stipulates that the health care process requires, or is reasonably expected to require, a registered nurse to be at the public hospital or qualifying facility at all times during the individual's stay. The fact that a registered nurse is present at all times at a public hospital

or a qualifying facility is not in itself determinative of whether the process requires that a registered nurse be present. For example, a single building may house chronic care patients with medical problems that require a high level of care such that a registered nurse is required to be available at all times to provide treatment and other chronic care. That same building may also house patients whose medical problems require a lower level of care that could not reasonably be expected to require this availability. In these circumstances, supplies of property that are made available, or services that are rendered, to the chronic care patients receiving the lower level of care would be excluded from the definition "facility supply" because of clause (*a*)(iii)(A), despite the fact that a registered nurse is in fact available in the building at all times.

Clause (*a*)(iii)(B) stipulates that the heath care process requires, or is reasonably expected to require, that a physician be at, or be on-call to attend at, the public hospital or qualifying facility at all times during the individual's stay. If a physician is not readily available because of the geographic isolation of the establishment where the process takes place, then the requirement can be for the presence or on-call availability of a nurse practitioner. For similar reasons, as illustrated in the preceding example, the fact that a doctor or a nurse practitioner is at, or is on call to attend at, a public hospital or qualifying facility is not in itself determinative of whether the nature of a particular process of health care requires, or is reasonably expected to require, that presence or availability.

Clauses (*a*)(iii)(C) and (D) provide that the process must also require, or reasonably be expected to require, that the individual be subject to medical management and receive a range of therapeutic health care services, including registered nursing care, throughout the process for a significant portion of each calendar day or part during which the individual stays at the public hospital or qualifying facility. A supply would not be a "facility supply" where the property supplied is made available to, or the service supplied is rendered to, an individual as part of a process of chronic health care that requires the individual to stay overnight at a qualifying facility if it is reasonable to expect that the individual will not be receiving therapeutic heath care services during all or substantially all of each calendar day or part of a day that the individual is at the facility. This would be the case in nursing home where the individual only requires care occasionally and such care is provided only for a short period of time each day.

Finally, paragraph (*b*) of the definition imposes a funding condition where the supplier does not operate the public hospital or qualifying facility at which the property supplied is made available or the service supplied is rendered. The condition requires that an amount, other than a nominal amount, must be paid or payable as "medical funding" (as defined in subsection 259(1)) to the supplier in respect of the supply.

The following are examples of supplies of services that either fall within or are excluded from the definition "facility supply".

Example 1

A qualifying non-profit organization makes an exempt supply of a service that is rendered to an individual at a qualifying facility that it operates and at which day surgeries only are performed. The service is rendered as part of a process of surgical treatment of the individual that is medically necessary acute medical care to treat a disease of the individual and is performed under the direction of and with the active involvement of the physician who performs the surgery.

The exempt supply of the service falls within the definition "facility supply" since it meets the requirements set out in subparagraphs (a)(i) and (ii) of the definition. The requirements of subparagraph (a)(iii) of the definition do not have to be met because that subparagraph only applies when the process of health care of which the property made available, or the service rendered, is a part is chronic care that requires the individual to stay overnight at the qualifying facility. As the qualifying non-profit organization operates the facility where the service is rendered, the requirement of paragraph (b) of the definition that an amount, other than a nominal amount, be paid or payable as "medical funding" to the supplier in respect of the supply also does not have to be met.

Example 2

A charity makes an exempt supply of a service that is rendered to an individual at a qualifying facility that it operates. The service is smoking cessation counseling that is given to community members, including the individual, who are not actively ill but want assistance in breaking their smoking habit. The person giving the counseling is not a physician nor is there any active involvement by a physician in the counseling.

The exempt supply of the service does not fall within the definition "facility supply" since it does not meet the requirements set out in subparagraph (a)(ii) of the definition in respect of the involvement of a physician.

Example 3

A qualifying non-profit organization makes an exempt supply of a service that is rendered to an individual at a qualifying facility that the organization operates. The service is renal dialysis that is rendered to an individual who suffers from chronic kidney disease. The individual must attend at the facility for a number of hours during the day or evening several times per week for the purpose of receiving the dialysis, but does not have to stay overnight there. The person operating the dialysis equipment is not a physician, but the individual's physician ordered the dialysis as part of the process of treatment of the individual's kidney disease and is actively involved in monitoring the individual's condition.

The exempt supply of the service falls within the definition "facility supply" since it meets the requirements set out in subparagraphs (a)(i) and (ii) of the definition. The requirements of subparagraph (a)(iii) of the definition do not have to be met because that subparagraph only applies when the process of health care of which the property made available, or the service rendered, is a part is chronic care that requires the individual to stay overnight at the qualifying facility. As the qualifying non-profit organization operates the facility where the service is rendered, the requirement of paragraph (b) of the definition that an amount, other than a nominal amount, be paid or payable as "medical funding" to the supplier in respect of the supply also does not have to be met.

"home medical supply"

The amendment adds the definition "home medical supply" that is relevant for the purposes of new clauses 259(4.1)(*b*)(iii)(B) to (D) of the Act, which specify those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a charity, public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act), "facility operator" or "external supplier" (as those terms are defined in subsection 259(1)).

A "home medical supply" is an exempt supply (other than a supply prescribed by regulations) of property that is made available, or a service that is rendered, at an individual's place of residence or lodging. A "home medical supply" cannot be a "facility supply"(as defined in subsection 259(1)), nor can it be a supply of property that is made available, or a service that is rendered, to an individual at a public hospital or a qualifying facility (within the meaning of subsection 259(2.1)). To qualify as a "home medical supply", the supply must satisfy the additional conditions set out in paragraphs (*a*) to (*d*) of the definition that are explained in detail in the following paragraphs.

Subparagraph (*a*)(i) of the definition requires that the supply be made as part of a medically necessary process of health care for an individual. The process must be for the purpose of maintaining health, preventing disease, diagnosing or treating an injury, illness or disability of the individual or providing palliative care.

Subparagraph (*a*)(ii) requires that the process of health care of which the exempt supply is a part takes place with the involvement of a physician acting in the course of the practice of medicine or a person prescribed by regulations acting in prescribed circumstances. Thus, subparagraph (*a*)(ii) requires that a physician or person prescribed by regulations must identify or confirm that it is appropriate for the process to take place at the individual's place of residence or lodging. For example, a physician might identify or confirm that an individual who has been recovering from a surgical procedure in a hospital has reached a stage where it is possible for the individual to be discharged from the hospital and to receive a process of medical care described in paragraph (*a*)(i) at the individual's home or at the home of a relative.

Paragraph (*b*) of the definition imposes a further condition that the property supplied be made available, or the service supplied be rendered, at the individual's place or residence or lodging and on the authorization of a person who is responsible for coordinating the process of health care or palliative care that the individual is receiving. Such a person might be, for example, a nurse acting as case manager in respect of an individual who is receiving a variety of health care services in the individual's home following an injury for which the individual was treated in a hospital. It must also be reasonable to expect that the person who is responsible for coordinating the process act either in consultation with, or with reference to, instructions provided by a physician or a person prescribed by regulations. This requirement could be met in the example of the nurse acting as case manager given above

if it were reasonable to expect that the nurse would consult with a physician with respect to important decisions relating to changes in the process, or would refer to notes made by a physician when the individual was discharged from the hospital, about the health care required to treat the injury after the discharge.

Paragraph (*c*) of the definition is intended to exclude supplies that include a significant element of personal or domestic care as opposed to health care. Thus, a supply of meals delivered to a patient would be excluded from the definition despite the fact that during the same period of time other supplies of property made available, or services rendered, to the patient would qualify as "home medical supplies". Paragraph (*c*) does not, however, exclude a supply that includes some element of personal or domestic care if it is the case that all or substantially all of the supply is of property or services that are elements of health care. For example, a supply of a nursing service rendered to a patient would not be excluded if the nurse performed some household or personal care tasks for the patient provided that all or substantially all of the services rendered as part of the supply were elements of health care.

Paragraph (*d*) sets out a funding condition that must be met for a supply to qualify as a "home medical supply". The condition in paragraph (*d*) requires that an amount, other than a nominal amount, must be paid or payable as "medical funding" (as defined in subsection 259(1)) to the supplier in respect of the supply.

"medical funding"

The amendment adds the definition "medical funding" of a supplier in respect of a supply that is relevant for the purposes of new definitions "ancillary supply", "home medical supply" and "facility supply" in subsection 259(1) of the Act, which apply for the purposes of section 259. One of the requirements for a supply to fall within the definition "ancillary supply" or "home medical supply" is that an amount, other than a nominal amount, must be paid or payable to the supplier as "medical funding" of the supplier in respect of the supply. This requirement also applies in the case of the definition "facility supply" if the supplier does not operate the public hospital or qualifying facility (within the meaning of subsection 259(2.1)) in which the property supplied is made available, or the service supplied is rendered, to an individual.

The stipulation in those definitions that an amount, other than a nominal amount, must be paid or payable to a supplier as "medical funding" in respect of a supply has the effect of requiring that there be a link between the supply and health care funding paid or payable by a government. In order for an amount to be "medical funding" in respect of a supply, it must be paid or payable to the supplier in respect of health care services, either to financially assist the supplier in making the supply or as consideration for the supply, by a government or by a person described in paragraph (*b*) of the definition.

A person described in paragraph (*b*) of the definition is a charity, public institution or qualifying non-profit organization one of the purposes of which is the organizing or coordinating of the delivery of health care services to the public and whose primary source of funding in respect of those services is reasonably expected to be a government.

"midwife"

The amendment adds the definition "midwife" that is relevant for the purposes of the definition "facility supply" in subsection 259(1) of the Act. A "midwife" is defined as a person who is entitled under the laws of a province to practise the profession of midwifery.

"physician"

The amendment adds the definition "physician" that is relevant for the purposes of the definitions "facility supply" and "home medical supply" in subsection 259(1) of the Act. A "physician" is defined as a person who is entitled under the laws of a province to practise the profession of medicine.

"qualifying funding"

The amendment adds the definition "qualifying funding" of an operator of a facility for a fiscal year or part of a fiscal year of the operator that is relevant for the purposes of new paragraph 259(2.1)(*b*) of the Act, which establishes one of the criteria that must be met in order for the facility to be a qualifying facility (within the meaning of subsection 259(2.1)). That paragraph requires that an amount of money, other than a nominal amount, must be paid or payable to the operator as "qualifying funding" of the operator in respect of the facility for a fiscal year or part of a fiscal year of the operator in order for the facility to be a qualifying facility of the operator for that fiscal year or part.

Paragraph 259(2.1)(*b*) has the effect of requiring that there be a link between the delivery of health care services to the public at the facility and funding paid or payable by a government. One of the requirements in order for an amount to be "qualifying funding" is that it must be paid or payable to the operator of the facility by a government or by a person described in paragraph (*b*) of the definition.

A person described in paragraph (*b*) of the definition is a charity, public institution or qualifying non-profit organization one of the purposes of which is the organizing or coordinating of the delivery of health care services to the public and whose primary source of funding in respect of those services is reasonably expected to be a government.

"specified activities"

The amendment adds the definition "specified activities" that is relevant for the purposes of subsection 259(15) of the Act. The definition "specified activities" means activities referred to in any of clauses 259(4.1)(*b*)(iii)(B) to (D), other than the operation of a public hospital. These activities can be summarized as the activities that involve the making of "facility supplies", "ancillary supplies" and "home medical supplies" (as those terms are defined in subsection 259(1)). An 83-per-cent rebate of the GST and the federal component of the HST on property or services used in these activities can generally be claimed by a charity, public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act), "facility operator" or "external supplier" (as those terms are defined in subsection 259(1)).

"specified supply"

The amendment adds the definition "specified supply" that is relevant for the purposes of subsection 259(15) of the Act. A "specified supply" of property of a person means a taxable supply made to the person at any time after December 31, 2004, of property that was owned on that day by the person or by another person who is related to the person at that time.

It also means a taxable supply that the person is deemed under subsection 211(4) of the Act to have made after December 30, 2004, of property that was, on that day, owned by the person, or by another person who last supplied the property to the person by way of sale and who was related to the person on the day the supply by way of sale was made.

Subclause 24(4)

Qualifying facilities

ETA
259(2.1)

The amendment adds subsection 259(2.1) of the Act that establishes the criteria that must be met in order for a facility or part of a facility to be a qualifying facility of its operator for all or part of a fiscal year of the operator. This subsection is relevant for the purposes of the definition "facility supply" in subsection 259(1) in that a supply cannot be a "facility supply" (as defined in subsection 259(1)) unless the property supplied is made available, or the service supplied is rendered, either at a public hospital or a qualifying facility. It is also relevant for the purposes of new clauses 259(4.1)(*b*)(iii)(B) and (C), which specify those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a charity, public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act) or a "facility operator" (as defined in subsection 259(1)).

A facility is a qualifying facility for a fiscal year of the operator of the facility, if the following conditions are met. First, supplies of services that are ordinarily rendered during that fiscal year to the public at the facility would be "facility supplies" (as defined in subsection 259(1)) if the references in the definition "facility supply" to "public hospital or qualifying facility" were references to the facility. In other words, the supplies of services that are ordinarily rendered to the public at the facility meet all conditions of the definition "facility supply" other than the conditions in respect of location.

Second, an amount, other than a nominal amount, is paid or payable to the operator as "qualifying funding" (as defined in subsection 259(1)) in respect of the facility for the fiscal year. Finally, an accreditation, licence or other authorization that is recognized or provided for under a law of Canada or a province in respect of facilities for the provision of health care services applies to the facility during that fiscal year. A qualifying facility excludes a public hospital.

It should be noted that a part of a facility can be a qualifying facility when the requirements referred to above are met in respect of that part but not in respect of the entire facility. For example, this could be the case where "facility supplies" of services are ordinarily rendered to the

public on some floors of a single building whereas other floors are used only for other purposes. Also, a facility can be a qualifying facility for only a part of a fiscal year if the conditions in subsection 259(2.1) are only met for part of a fiscal year.

Subclause 24(5)

Apportionment of rebate

ETA
259(4.1)(*b*)(i) to (iv)

Subsection 259(4.1) of the Act provides specific rebate apportionment rules for charities, public institutions or qualifying non-profit organizations that are selected public service bodies. These selected public services bodies must apportion inputs related to their activities in accordance with this subsection for purposes of determining the amount of their rebates. In general, paragraph 259(4.1)(*a*) provides that these entities are entitled to recover 50 per cent of otherwise unrecoverable GST and federal component of HST. Paragraph 259(4.1)(*b*) has, in general, the effect of allowing a selected public service body to recover an additional percentage (equal to the specified percentage applicable to the body minus 50 per cent) of otherwise unrecoverable GST and federal component of HST to the extent to which its inputs are for consumption, use or supply in the course of activities specified in clauses 259(4.1)(*b*)(iii)(A) or (B). In the case of a hospital authority (as defined in subsection 123(1) of the Act), the activity specified in clause (B) is the operation of a public hospital.

Paragraph 259(4.1)(*b*) is amended to allow hospital authorities, "facility operators" and "external suppliers" (as those terms are defined in subsection 259(1)) to recover an additional percentage equal to 33 per cent of otherwise unrecoverable GST and federal component of HST to the extent that their inputs are for consumption, use or supply in the course of activities referred to in clauses 259(4.1)(*b*)(iii)(B) to (D) respectively. These activities can be summarized as the activities that involve the making of "facility supplies", "ancillary supplies" and "home medical supplies" (as those terms are defined in subsection 259(1)).

Subclause 24(6)

Exclusions

ETA
259(4.2)

Subsection 259(4.2) of the Act provides that no provincial component of the HST is to be included in determining a component of a rebate under paragraphs 259(3)(*a*) and (4)(*a*).

This subsection is amended to provide that, in determining a rebate payable to a person, no provincial component of the HST is to be included in determining an amount under paragraph 259(4.1)(*a*) if the applicable provincial percentage is zero per cent and the person is a selected public service body described in any of paragraphs (*a*) to (*e*) of the definition of that expression in subsection 259(1) or paragraphs (*f*) or (*g*) of that definition if the person is resident in Newfoundland and Labrador. This amendment is intended to ensure that "external suppliers" and "facility operators" (as those terms are defined in subsection 259(1)), other than those resident in Newfoundland and Labrador, are eligible to obtain a rebate of 50 per cent of the otherwise unrecoverable provincial component of HST under paragraph 259(4.1)(*a*). The ability of "external suppliers" and "facility operators" resident in Newfoundland and Labrador to obtain a rebate of 50 per cent of the otherwise unrecoverable provincial component of HST is, in certain cases, provided for under subsection 259(4.3).

Subclause 24(7)

Rebate to certain selected public service bodies in Newfoundland and Labrador

ETA
259(4.3)(*c*)(ii)

Under section 259 of the Act, no rebate of the provincial component of the HST is provided to a selected public service body resident in Newfoundland and Labrador except as provided for in subsection 259(4.3). That subsection enables Newfoundland and Labrador resident selected public service bodies that also qualify as charities, public institutions or qualifying non-profit organizations to claim a rebate in respect of the provincial component of the HST. The rebate is equal to 50 per cent of the otherwise unrecoverable provincial component of the

HST incurred in respect of inputs related to any exempt activities they undertake other than in the course of fulfilling their responsibilities as a selected public service body.

Subparagraph 259(4.3)(*c*)(ii) is amended by adding references to the activities of making "facility supplies", "ancillary supplies" or "home medical supplies" (as those terms are defined in subsection 259(1)) or operating a qualifying facility (within the meaning of subsection 259(2.1)) for use in making "facility supplies". This amendment is intended to provide consistent treatment for all selected public service bodies resident in Newfoundland and Labrador with respect to their ability to claim rebates in respect of the provincial component of HST. The effect of the amendment is to allow a hospital authority (as defined in subsection 123(1) of the Act), "external supplier" or "facility operator" (as those terms are defined in subsection 259(1)) resident in Newfoundland and Labrador that is also a charity, public institution or qualifying non-profit organization to claim rebates under subsection 259(4.3) equal to 50 per cent of the otherwise unrecoverable provincial component of the HST incurred in respect of inputs related to any exempt activities it undertakes other than in the course of fulfilling its responsibilities as a selected public service body.

Subclause 24(8)

Selected public service bodies

ETA
259(7)

Subsection 259(7) of the Act provides that, where one selected public service body acquires or imports property or a service that is primarily for use by another selected public service body, the rebate of tax in respect of that acquisition or importation is determined based upon the category of public service body in which the user falls.

The English version of subsection 259(7) is amended to replace the reference in this subsection to a selected public service body described in any of paragraphs (*a*) to (*e*) of the definition of the expression "selected public service body" in subsection 259(1) by simply a reference to selected public service body since subsection 259(7) applies to all selected public service bodies. The amendment is consequential to the addition of the terms "facility operator" and "external supplier" (as those terms are defined in subsection 259(1)) in new paragraphs (*f*) and (*g*) of the definition "selected public service

body". The French version of the Act does not require any amendment since it does not make reference to specific paragraphs.

Subclause 24(9)

Selected public service bodies

ETA
259(8)

Subsection 259(8) of the Act provides that, where a single organization falls into more than one category of selected public service body, the rebate to which the organization is entitled in respect of acquisition or importation of a particular property or service is based on the primary use of the property or service. For example, if an organization operates both a public hospital and a university, any purchases that are primarily for use in the university would qualify for a rebate based upon the rebate rate applicable to a university while purchases that are primarily for use in the public hospital would qualify for rebates based upon the rebate rate applicable to a hospital authority. That primary use rule does not apply if an organization acquired property partly for use in a nursing home in its capacity as a charity and partly for use in a hospital in its capacity as a hospital authority since a charity is not included in the definition "selected public service body". In that later case, the apportionment rule is found under subsection 259(4.1).

Subsection 259(8) is amended to refer to a selected public service body described in any of paragraphs (*a*) to (*g*) of the definition "selected public service body" in subsection 259(1). This amendment is consequential to the addition of the terms "facility operator" and "external supplier" (as those terms are defined in subsection 259(1)) in new paragraphs (*f*) and (*g*) of the definition "selected public service body".

Subclause 24(10)

Application and rules for specified supplies

ETA
259(14) and (15)

Rebates of a person under section 259 of the Act are based on the "non-creditable tax charged", which is a term defined in subsection 259(1) that refers to certain amounts that the person is or was required to pay as

tax under Part IX of the Act (net of input tax credits and other amounts that the person is otherwise entitled to recover or is relieved from the obligation to pay). Where the non-creditable tax charged in respect of property or a service for a claim period of a person was incurred by the person acting in different capacities, the person may be required to allocate that non-creditable tax charged based upon the extent to which it was incurred by the person acting in those different capacities in determining the amount of a rebate of the person under section 259 for the claim period.

The amendment adds subsection 259(14) that creates a rule that applies when all or substantially all of the non-creditable tax charged for a claim period of a person is tax that the person incurs in the person's capacity as a hospital authority (as defined in subsection 123(1) of the Act), "facility operator" or "external supplier" (as those terms are defined in subsection 259(1)). The rule deems all of that non-creditable tax charged to have been incurred in that capacity. This rule has the effect of relieving the person from the obligation to allocate the non-creditable tax charged for the claim period between tax that was incurred in the person's capacity as a hospital authority, "facility operator", or "external supplier" and tax that was incurred in other capacities.

The amendment also adds subsection 259(15) that relates to amendments to paragraph 259(4.1)(*b*) that have the effect of allowing hospital authorities (as defined in subsection 123(1)), "facility operators" and "external suppliers" (as those terms are defined in subsection 259(1)) to include, in determining the amount of their rebates under section 259, an additional percentage equal to 33 per cent of otherwise unrecoverable GST and federal component of HST to the extent that their inputs are for consumption, use or supply in the course of activities referred to in clauses 259(4.1)(*b*)(iii)(B) to (D) respectively. These activities can be summarized as the activities that involve the making of "facility supplies", "ancillary supplies" and "home medical supplies" (as those terms are defined in subsection 259(1)).

Subsection 259(15) provides a rule to be used for the purposes of calculating a rebate of a person that is a hospital authority, "facility operator" or "external supplier". The rule applies when determining amounts that the person is entitled to include under paragraph 259(4.1)(*b*) in respect of unrecoverable GST and federal component of HST arising from a supply of property included in the new definition "specified supply" in subsection 259(1) where the rebate relates to

activities that are included in the new definition "specified activities" in that subsection. Since the intent is to allow the extended health care rebate in respect of tax on property and services acquired on or after January 1, 2005, the general effect of the rule is to reduce the inclusion of the additional percentage in determining the amount of a rebate in respect of property that was owned prior to 2005 by the rebate claimant or a related person from whom the claimant acquired the property.

Clause 25

Business number verification

ETA
295(6.1)

Section 295 of the Act prohibits a government official from using or communicating any taxpayer information obtained in the administration of the GST/HST under Part IX of the Act, unless specifically authorized by one of the exceptions found in that section. Subsection 169(4) of the Act provides that a GST/HST registrant is not permitted to claim an input tax credit unless the registrant has sufficient evidence to support the claim, including the name of the supplier and, in many cases, the registration number assigned under subsection 241(1) of the Act.

The amendment adds subsection 295(6.1), which authorizes a government official to confirm or deny the veracity of both the GST/HST registration status of an identified person and that person's business number, upon being provided with a number and information specified by the Minister that is sufficient to identify the person. Subsection 295(6.1) allows the Canada Revenue Agency to establish a publicly accessible Web-based GST/HST registry to facilitate the verification of a supplier's GST/HST registration by registrants for purposes of claiming input tax credits.

This amendment comes into force on Royal Assent.

Clause 26

Liability of Directors

ETA
323(1)

Where a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) of the Act, existing subsection 323(1) of the Act provides that a director of a corporation can, subject to certain conditions set out in section 323, be held jointly and severally liable, together with the corporation, to pay the net tax and any interest or penalties relating to the net tax. One of those conditions, is that the director has not exercised due diligence in ensuring that the remittances are made.

Subsection 323(1) is amended to provide that a director of a corporation may also be held liable for the failure by the corporation to pay an amount of net tax refund to which the corporation is not entitled, as required under section 230.1 of the Act, and any interest and penalties relating to that amount.

Subsection 323(1) is also amended to harmonize it with the civil law applicable in the province of Quebec by adding in the English version of the subsection a reference to the directors being "solidarily" liable, which is comparable to the common law concept of joint and several liability.

The amendment applies in respect of net tax refund amounts paid to, or applied to the liability of, a corporation on or after Royal Assent.

Excise Tax on Jewellery

The Excise Tax Act

Clause 27

Excise tax on jewellery

ETA
Schedule 1, Section 5

Existing section 5 of Schedule 1 to the *Excise Tax Act* sets out the rate of tax applicable to (*a*) clocks and watches, (*b*) articles made of semi-precious stones and (*c*) jewellery, that is manufactured and sold in, or imported into, Canada. The tax is payable by manufacturers on the sale price of domestically-produced goods at the time of delivery to the purchaser, and by importers on the duty-paid value of goods in accordance with the provisions of the *Customs Act*.

Existing section 5 is replaced by new sections 5 to 5.2 to implement the phase out of the excise tax on jewellery through a series of rate reductions, and eventual repeal. The rate is reduced to 8 per cent from 10 per cent effective February 24, 2005, and is reduced by an additional 2 percentage points on March 1 in each of the following three years, until new sections 5 to 5.2 are repealed effective March 1, 2009. The reduced rates, and the eventual repeal, apply to deliveries or importations on or after the specified dates.

New section 5 sets out the reduced rate of tax for clocks and watches, as follows:

> (*a*) eight per cent of the amount by which the sale price or duty-paid value exceeds fifty dollars, applicable after February 23, 2005 and before March 2006;
>
> (*b*) six per cent of the amount by which the sale price or duty-paid value exceeds fifty dollars, applicable after February 2006 and before March 2007;
>
> (*c*) four per cent of the amount by which the sale price or duty-paid value exceeds fifty dollars, applicable after February 2007 and before March 2008;

(*d*) two per cent of the amount by which the sale price or duty-paid value exceeds fifty dollars, applicable after February 2008 and before March 2009.

New section 5.1 sets out the reduced rate of tax for articles made of semi-precious stones, as follows:

(*a*) eight per cent, applicable after February 23, 2005 and before March 2006;

(*b*) six per cent, applicable after February 2006 and before March 2007;

(*c*) four per cent, applicable after February 2007 and before March 2008;

(*d*) two per cent, applicable after February 2008 and before March 2009.

New section 5.2 sets out the reduced rate of tax for jewellery, as follows:

(*a*) eight per cent, applicable after February 23, 2005 and before March 2006;

(*b*) six per cent, applicable after February 2006 and before March 2007;

(*c*) four per cent, applicable after February 2007 and before March 2008;

(*d*) two per cent, applicable after February 2008 and before March 2009.

New sections 5 to 5.2 are repealed effective March 1, 2009.